

922 KAR 1:140. Foster care and adoption permanency services.

RELATES TO: KRS 2.015, 199.011(3), (4), (9), 199.462, 199.555, 199.557, 199.801, 387.025, 527.100, 527.110, 600.020(2), (7), (8), 610.110, 610.125, 610.127, 620.020(1), (11), 620.060, 620.090, 620.140, 620.180, 625.040, 625.090, 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963, 42 U.S.C. 621-629m, 670-679c, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, 620.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.467 requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions. (1) "Absent parent search" means cabinet initiated efforts to locate a biological or legal parent, or a relative.

(2) "Age or developmentally appropriate" is defined by KRS 600.020(2).

(3) "Cabinet" is defined by KRS 199.011(3) and 600.020(7).

(4) "Case permanency plan" is defined by KRS 620.020(1).

(5) "Child" means:

(a) A child defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(6) "Concurrent planning" means the cabinet simultaneously plans for:

(a) The return of a child in the custody of the cabinet to the child's parent; and

(b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last twenty two (22) months, in accordance with 42 U.S.C. 675(5)(E).

(7) "Fictive kin" is defined by KRS 199.011(9).

(8) "Parent" is defined by 42 U.S.C. 675(2).

(9) "Reasonable efforts" is defined by KRS 620.020(11).

(10) "Relative" means an individual related to a child by blood, marriage, or adoption.

(11) "Sufficient progress" means compliance with case permanency plan objectives that support the safe return of the child to the child's parent.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty four (24) months shall be 3,000 during a state fiscal year.

Section 3. Permanency Planning. (1) In a court permanency hearing held pursuant to KRS

610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child's parent:

- (a) Have been unsuccessful; or
- (b) Are not required under the provisions of KRS 610.127.
- (2) A child shall be removed from the child's home if:
 - (a) An emergency custody order has been obtained pursuant to KRS 620.060;
 - (b) A temporary custody order has been obtained pursuant to KRS 620.090; or
 - (c) A court orders the removal pursuant to KRS 620.140(1)(c).
- (3) Upon removal of a child from the child's home, placement shall be:
 - (a) Selected according to the least restrictive appropriate placement available, as required by KRS 620.090(2); and
 - (b) Closest in proximity to the child's home, in accordance with KRS 199.801.
- (4) In the provision of permanency services, the cabinet shall meet the requirements of the:
 - (a) Indian Child Welfare Act in accordance with 25 U.S.C. 1901-1963, 42 U.S.C. 671(a)(32), and 42 U.S.C. 1996; or
 - (b) Multiethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(7), 671(a)(18), and 1996b.
- (5) An absent parent search shall:
 - (a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;
 - (b) Be conducted to gather as much information as possible related to the person and the person's location, which may include:
 - 1. Date of birth;
 - 2. Social Security number;
 - 3. Present or previous employers; and
 - 4. Present or most recent address; and
- (c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.
- (6) If a relative or fictive kin placement is in the best interest of the child, the cabinet shall:
 - (a) Use an absent parent search to locate a relative;
 - (b) Discuss with the relative or fictive kin the option to pursue approval as a foster parent in accordance with 922 KAR 1:350 and document the relative's decision or fictive kin's decision in the case file using the Relative and Fictive Kin Caregiver Agreement.
 - 1. A relative's decision or fictive kin's decision to pursue approval as a foster parent shall not guarantee the cabinet's approval.
 - 2. If a relative or fictive kin declines to pursue approval as a foster parent prior to accepting custody of a child, the relative or fictive kin shall not have another opportunity to pursue being a foster parent at a later time in the child's placement due to ineligibility under 42 U.S.C. 672;
 - (c) Document in the case file that the fictive kin has completed training on the prevention and recognition of pediatric abusive head trauma in accordance with KRS 199.462;
 - (d) Provide information to the relative and fictive kin on how to recognize and report child abuse and neglect;
 - (e) Conduct background checks on the relative or fictive kin pursuant to 922 KAR 1:490; and
 - (f) Complete a home evaluation with consideration given to the relative's or fictive kin's:
 - 1. Willingness and ability to:
 - a. Protect the child from abuse or neglect;
 - b. Participate in the child's case permanency plan;
 - c. Access:
 - (i) Transportation;

- (ii) Telephone;
- (iii) Medical services;
- (iv) First aid supplies; and
- (v) School;
- d. Provide full-time care;
- e. Provide for the child's sleeping and eating;
- f. Maintain adequate heat and ventilation in the home;
- g. Use active smoke detectors in the home; and
- h. Assure the child's inaccessibility to:
 - (i) Medication unless an exception consistent with 922 KAR 1:350, Section 3(12) applies;
 - (ii) Alcoholic beverages;
 - (iii) Poisonous materials;
 - (iv) Firearms or ammunition in accordance with KRS 527.100 and 527.110;
 - (v) Unsupervised contact with the birth parent; and
 - (vi) Cleaning materials unless the materials are age or developmentally appropriate for the child or the child is supervised; and
- 2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family.
- (7) The cabinet shall not be obligated to search for or seek fictive kin as a placement for a child.
- (8) A relative or fictive kin who accepts custody of a child removed from the child's home of origin by a court shall not be entitled to reimbursement in accordance with 922 KAR 1:350, Section 10.
- (9) If the case conference held in compliance with KRS 620.180(2)(a)1 results in the child being placed in the custody of the cabinet, the cabinet shall develop and document a case permanency plan, using the DPP-1281, Family Case Plan.
- (10) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.
- (11) Concurrent planning shall be considered:
 - (a) During development of the case permanency plan; and
 - (b) At the six (6) month case review.

Section 4. Permanency Goals. (1) A permanency goal for a child who has been removed from the child's home of origin by a court shall be established according to the particular needs and best interest of the child.

- (2) A permanency goal shall include one (1) of the following:
 - (a) Return to parent;
 - (b) Adoption;
 - (c) Permanent relative placement;
 - (d) Legal guardianship; or
 - (e) Another planned permanent living arrangement.

Section 5. Return to Parent. (1) The cabinet shall recommend to the court that a child who has been removed from the child's home of origin by the court is returned to the parent if the cabinet determines:

- (a) A family has made sufficient progress toward completing the case permanency plan; and
- (b) Return to the parent is in the best interest of the child.
- (2) If the cabinet determines that a family has not made sufficient progress towards achieving the objectives specified in the case permanency plan, the cabinet shall seek a court order

for:

- (a) A change in the permanency goal;
- (b) Termination of parental rights; or
- (c) A civil action in support of the child's permanency goal.

(3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption. (1) The permanency goal for a child in the custody of the cabinet shall be adoption if:

- (a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or
- (b) The cabinet pursues involuntary termination of parental rights:

1. Pursuant to KRS 625.090; or

2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675(5)(E).

(2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:

- (a) A relative or fictive kin placement has been secured;
- (b) Termination is not in the best interest of the child, for a compelling reason:
 - 1. Documented in the case permanency plan; and
 - 2. Monitored on a continual basis; or

(c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.

(3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1).

Section 7. Permanent Relative Placement. The permanency goal for a child who has been removed from the child's home of origin by a court shall be permanent custody if:

(1) Return to the parent is not in the child's best interest; and

(2) The cabinet determines that a relative who does not pursue adoption or legal guardianship is able to provide a permanent home for the child.

Section 8. Legal Guardianship. (1) The permanency goal for a child who has been removed from the child's home of origin by a court shall be legal guardianship if the cabinet determines that:

(a) Return to the parent or adoption is not in the child's best interest;

(b) There is an identified adult, including fictive kin, willing to seek legal guardianship of the child; and

(c) Legal guardianship by the adult identified in paragraph (b) of this subsection is in the child's best interest.

(2) Legal guardianship shall be requested pursuant to KRS 387.025.

Section 9. Another Planned Permanent Living Arrangement. (1) The permanency goal for a child in the custody of the cabinet who is sixteen (16) years of age or older shall be another planned permanent living arrangement if:

(a) An unsuccessful effort has been made to place the child for adoption or with a relative or fictive kin, and the child has been placed on a national adoption register;

(b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;

(c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;

(d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and

(e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.

(2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child placed with a private child-caring agency.

Section 10. Permanency Services. (1) The cabinet shall provide services for a child who has been removed from the child's home of origin by a court so that permanency is achieved.

(2) Permanency services may include:

(a) Ongoing case work and monitoring of the family to:

1. Maintain the child safely in the child's home; and

2. Ensure safe return of the child if the goal is return to the parent;

(b) Independent living services and programming for the child in accordance with 42 U.S.C. 677;

(c) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;

(d) Post-finalization adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;

(e) Post-adoption placement stabilization services as described in 922 KAR 1:530; or

(f) Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal. Other cabinet resources for a prospective or existing permanent relative or fictive kin placement may include:

1. The Kentucky Transitional Assistance Program (K-TAP) for a child if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;

2. Health benefits for a child if an application is made in accordance with 907 KAR 20:015, 907 KAR 4:020, or 907 KAR 4:030;

3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030;

4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available; or

5. The Child Care Assistance Program in accordance with 922 KAR 2:160.

Section 11. Funerals and Burials. (1) The biological or legal parent of a child deceased while in temporary custody or committed to the cabinet, shall be responsible for funeral arrangements, unless the:

(a) Parental rights have been terminated;

(b) Parent cannot be located; or

(c) Parent is unable to make funeral arrangements.

(2) Personal and family resources, including the deceased child's trust fund and insurance in the deceased child's name, shall be exhausted prior to the approval of cabinet funds for funeral and burial expenses.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-1281, Family Case Plan", 11/16; and

(b) "Relative and Fictive Kin Caregiver Agreement", 1/18.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (9 Ky.R. 667; eff. 12-1-1982; 10 Ky.R. 690; eff. 12-2-1983; 16 Ky.R. 1067; eff. 1-12-1990; 20 Ky.R. 2406; eff. 3-23-1994; Recodified from 905 KAR 1:140, 10-30-1998; 26 Ky.R. 2423; 27 Ky.R. 814; 1274; eff. 11-17-2000; TAm eff. 10-27-2004; TAm eff. 1-27-2006 35 Ky.R. 1365; 1823; eff. 2-6-2009; 39 Ky.R. 2225; 40 Ky.R. 554; eff. 9-18-2013; 43 Ky.R. 823, 1201; eff. 3-3-2017; 44 Ky.R. 416, 1060; eff. 1-5-2018.)